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AUTHOR Matthias, Mary
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ABSTRACT

This document provides information on current Wisconsin statutes and state-level activities relating to the enforcement of controlled substances laws, including assistance provided to local law enforcement agencies. Part I of this document describes the Uniform Controlled Substances Act as enacted by Wisconsin, other statutes which may be used to assist drug enforcement efforts, and amendments to the Uniform Controlled Substances Act being considered by a drafting committee of the National Conference of Commissioners on Uniform State Laws. Part II describes the activities of the Department of Justice (DOJ) and the Office of Justice Assistance (OJA) related to drug law enforcement including the OJA's administration grants under the Federal Anti-Drug Abuse Act of 1986 and the Federal Anti-Drug Abuse Amendments Act of 1988. A 9-page appendix lists offenses and penalties for the following: controlled substances violations in the categories of manufacturing or delivering a controlled substance; possession of a controlled substance with intent to manufacture or deliver; conspiracy to manufacture, deliver or possess with intent to manufacture or deliver controlled substances; possession of controlled substances; distributions of controlled substances to minors 3 or more years younger; distribution of controlled substances to prisoners; and distribution of a controlled substance on school premises. (ABL)

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WISCONSIN'S DRUG LAWS AND ENFORCEMENT

STAFF BRIEF 89-1

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April 13, 1989

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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Drug Law Enforcement — April 13, 1989

STAFF BRIEF 89-1*

WISCONSIN'S DRUG LAWS AND ENFORCEMENT

INTRODUCTION

This Staff Brief was prepared for the Legislative Council's Special Committee on Drug Law Enforcement. The Special Committee was established by the Legislative Council, on March 15, 1989, and directed to:

> ...study the enforcement by local law enforcement agencies of those laws relating to the sale, possession and use of controlled substances, for the purpose of reviewing whether additional state assistance, including the revision of relevant laws and procedures and the provision of additional resources, is necessary or desirable to enhance the enforcement of such laws.

The purpose of this Staff Brief is to provide information on current Wisconsin statutes and state-level activities relating to the enforcement of controlled substances laws, including assistance provided to local law enforcement agencies.

Part I of this Staff Brief describes the Uniform Controlled Substances Act, as enacted in Wisconsin, other statutes which may be used to assist drug enforcement efforts and amendments to the Uniform Controlled Substances Act being considered by a drafting committee of the National Conference of Commissioners on Uniform State Laws.

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*This Staff Brief was prepared by Mary Matthias, Staff Attorney, Legislative Council Staff.

PART I

WISCONSIN'S DRUG ENFORCEMENT STATUTES

Section A of this Part of the Staff Brief describes Wisconsin's Uniform Controlled Substances Act; Section B describes other statutes which may be used to assist drug enforcement efforts; and Section C describes amendments to the Uniform Controlled Substances Act being considered by a drafting committee of the National Conference of Commissioners on Uniform State Laws.

A. UNIFORM CONTROLLED SUBSTANCES ACT

The primary Wisconsin statutes governing drug-related crimes are contained in ch. 161, Stats., the Uniform Controlled Substances Act. That Act is a uniform state law developed for consideration and possible enactment by the individual states by the National Conference of Commissioners on Uniform State Laws, as amended and enacted in Wisconsin.

1. Classification of Substances

Subchapter II of ch. 161 classifies all controlled substances into five different categories, or "schedules," according to: (a) each substance's potential for abuse; (b) the existence of any accepted medical use for the substance in treatment; and (c) the potential that abuse of the particular substance may lead to psychological or physical dependence.

Schedules I and II include substances which have a high potential for abuse. For example, Schedule I includes lysergic acid diethylamide (LSD), phencyclidine (PCP), heroin and tetrahydrocannabinols (THC, the hallucinogenic contained in marijuana). Examples of substances listed in Schedule II include opium, codeine, morphine, cocaine, methadone and amphetamines. Schedules III, IV and V contain substances lower potentials for abuse for which there is a currently accepted medical use.

The Wisconsin Controlled Substances Board may add, delete or reschedule substances enumerated in the five schedules, by administrative rule. The statutes direct the Controlled Substances Board to use the following criteria in placing substances in each of the five schedules.

a. Schedule I

(1) The substance has high potential for abuse; and

(2) The substance has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

b. Schedule II

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) Abuse of the substance may lead to severe psychic or physical dependence.

c. Schedule III

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

d. Schedule IV

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

e. Schedule V

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

2. General Prohibitions

Subchapter III of ch. 161 generally prohibits the manufacture, distribution, dispensing and use of controlled substances by any person, except:

a. A person who is registered under federal law to possess, manufacture, distribute, dispense or use the substances in Wisconsin and the person's agents or employes;

b. A common or contract carrier or warehousekeeper, or employe thereof, whose possession of any controlled substance is in the course of business or employment;

c. A medical practitioner;

d. A person to whom controlled substances have been prescribed;

e. A person authorized to use controlled substances in research, instruction and other specialties; or

f. A person who is otherwise authorized to possess such substances under federal law.

3. Enforcement

a. Local and State Law Enforcement Agencies

Subchapter V of ch. 161 contains the enforcement and administrative provisions of the Uniform Controlled Substances Act.

Both local law enforcement agencies and the DOJ may enforce the Act, although their specific authority and responsibilities are different. Local law enforcement agencies (i.e., municipal police departments and sheriffs) may enforce the Act by undertaking investigations, making arrests, making seizures pursuant to s. 161.55, Stats., and referring cases to the local district attorney for prosecution.

The DOJ is authorized, under s. 165.70, Stats., to enforce the Act by undertaking investigations and making arrests. These functions are carried out by the DOJ's Bureau of Narcotics and Dangerous Drugs which has

offices located in Milwaukee, Madison, Eau Claire and Appleton. The Bureau currently has 45 full-time employes assigned to the enforcement of narcotics and dangerous drugs. The Bureau and its activities are described in greater detail in Part II, A, of this Staff Brief.

The DOJ does not prosecute violations of the Uniform Controlled Substances Act, except in limited situations. Usually, the DOJ refers cases to either local district attorneys or the U.S. attorney for the appropriate federal judicial district of Wisconsin. In rare situations, the DOJ's criminal litigation unit does prosecute violations of the Act--for example, when a district attorney has a conflict of interest in a case. However, the DOJ has no original prosecutorial authority under the Act and must receive special authority from either the Governor or the circuit court to prosecute each case.

According to Gary Hamblin, Director, Bureau of Narcotics and Dangerous Drugs, DOJ, the factors which determine whether the DOJ refers a case to a district attorney or U.S. attorney are: (1) whether the criminal activity investigated is multi-county in nature, in which case it is more efficient to bring the action in federal court; (2) whether federal conspiracy law, which is easier to enforce than state conspiracy law, can be used; (3) whether federal forfeiture law can be used; and (4) the DOJ's assessment of sentencing practices in various counties. Mr. Hamblin said that cases are often referred to the U.S. attorney because the DOJ believes that, in some situations, violators will receive more stringent sentences from the U.S. district court judges than from Wisconsin circuit court judges.

In addition to making investigations and arrests, the Act requires the DOJ to cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To those ends, the DOJ may: arrange for the exchange of relevant information among government officials; coordinate and cooperate in training programs concerning controlled substances law enforcement at local and state levels; and cooperate with the Bureau of Narcotics and Dangerous Drugs within the U.S. Department of Justice by collecting certain statistics and records and making them available for federal, state and local law enforcement purposes [s. 161.54, Stats.].

b. Controlled Substances Board

Subchapter III of ch. 161 directs the Controlled Substances Board to take the following actions to control and prevent the diversion of controlled substances to other unauthorized uses:

(1) For controlled substances selected by the Board, prepare descriptive and analytic reports on the potential for diversion and actual diversion patterns. These reports must be made available to state regulatory, licensing and law enforcement agencies.

(2) Enter into written agreements with other state and federal agencies to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances laws, monitor compliance with those laws and monitor interagency cooperation.

(3) Evaluate the outcome of its program and submit an annual report to the Legislature on its findings and recommendations for improving control and prevention of the diversion of controlled substances [s. 161.36, Stats.].

c. Pharmacy Examining Board

Subchapter V of ch. 161 authorizes the Pharmacy Examining Board to administer the Act by executing and serving warrants, making arrests for violations of ch. 161 and seizing property subject to forfeiture under the subchapter [s. 161.51, Stats.]. In practice, however, the Pharmacy Examining Board limits its activities to investigating alleged cases of misconduct by pharmacists and imposing disciplinary sanctions such as suspension or revocation of licenses. The Pharmacy Examining Board does not systematically inspect pharmacies but acts only on referrals from the DOJ or other agencies or persons.

d. Municipal Ordinances

Violations of the Controlled Substances Act are deemed to be public nuisances under ch. 823, Stats., whether or not any criminal prosecutions are commenced based on the same acts. As a result of this provision, local units of government may enact and enforce ordinances relating to violations under the Act [s. 161.53, Stats.].

4. Penalties

a. Recent Legislative Changes

Penalties for violations of the Controlled Substances Act were reviewed and substantially revised by both the 1985 and 1987 Legislatures. Specifically, the following laws were enacted:

(1) Mandatory minimum penalties. 1985 Wisconsin Act 328 established mandatory minimum penalties for the manufacture or delivery of cocaine. 1987 Wisconsin Act 339 created similar mandatory minimum penalties for

other specified controlled substances and significantly increased the maximum fines and prison terms for these crimes. These revised penalties became effective on April 28, 1988, and apply only to violations occurring after that date.

(2) "Len Bias" provision. 1987 Wisconsin Act 339 included a provision, commonly known as the "Len Bias" provision, which created a new category of second-degree murder. Under this provision, a person is guilty of second-degree murder if he or she manufactures, delivers, administers or assists in administering a controlled substance to another person and that person dies as a result of the use of the substance. This offense is a Class B felony, punishable by imprisonment not to exceed 20 years. This provision became effective on April 28, 1988, and applies only to violations occurring after that date.

(3) Surcharges. 1987 Wisconsin Act 339 created a surcharge equal to 1/2 of the amount of any fine imposed for the crimes of possession, manufacture, delivery and possession with intent to manufacture or deliver a controlled substance and conspiracy to engage in any of these activities. The surcharges are deposited with the Department of Health and Social Services (DHSS) to be expended on alcohol and other drug abuse prevention, intervention and treatment programs. This provision became effective on April 28, 1988, and applies only to violations occurring after that date.

b. Current Penalties

Current penalties for violations of the Controlled Substances Act are summarized in the Appendix to this Staff Brief. Please consult it for detailed information on offenses and penalty levels.

c. Seizures and Forfeitures

Under subch. V of ch. 161, certain items related to violations of the Act may be seized by a law enforcement officer or a Pharmacy Examining Board employe and are subject to forfeiture. The items which are subject to seizure and forfeiture include:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the Act.

(2) All raw materials, products and equipment used in manufacturing or delivering any controlled substance in violation of the Act.

(3) All property used or intended for use as a container for the substances or products described under (1) and (2), above.

(4) All vehicles used to transport any of the above-described items.

(5) All books, records and research products which are used or intended for use in violation of the Act.

(6) All real and personal property, including money, derived from or realized through the commission of any crime under the Act [s. 161.55 (1), Stats.].

Under the Act, the property listed above may be seized upon process issued by a court. In addition, the property may be seized, without process, if any of the following apply:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative warrant.

(2) The property has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding under the Act.

(3) The officer or employe has probable cause to believe that the property is dangerous to health or safety.

(4) The officer or employe has probable cause to believe that the property was used or is intended to be used in violation of the Act, that the property was derived from or realized through a crime under the Act or that the property is a vehicle which was used to transport a controlled substance in violation of the Act [s. 161.55 (2), Stats.].

The Act specifies proceedings which must be followed to allow persons having claims to the seized property to assert those claims. The Act also specifies what the seizing agency may or shall do with the various types of property seized [s. 161.55 (3) to (5), Stats.].

B. OTHER STATUTES WHICH MAY BE USED TO ASSIST DRUG ENFORCEMENT EFFORTS

In addition to the Uniform Controlled Substances Act, the following provisions of the Wisconsin statutes may be used to assist in enforcing the controlled substances laws.

1. The Wisconsin Organized Crime Control Act

The Wisconsin Organized Crime Control Act (WOCCA) [ss. 946.80 to 946.87, Stats.] has been used to prosecute drug dealers in Wisconsin. It is based on the Federal Racketeer Influenced and Corrupt Organizations Act (Fed RICO), found in Ch. 96 of Title XVIII of the U.S. Code, and is

sometimes referred to as Wisconsin's "little RICO" law. Basically, the Act provides increased criminal and civil penalties for persons who use proceeds derived from a "pattern of racketeering activity" to invest in an enterprise or acquire property. In general, a "pattern of racketeering activity" means engaging in at least three incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics. Included within the definition of "racketeering activity" are conspiracy or attempt to commit a felony violation under the Uniform Controlled Substances Act, as well as the actual commission of such a felony violation. [Every offense set forth in the Appendix to this Staff Brief, other than those few requiring sentencing to the county jail, is a felony.]

Any person convicted of engaging in an activity prohibited under the WOCCA is guilty of a Class C felony which is punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both. However, if the person derived pecuniary value from, or caused personal injury, property damage or other loss by these activities, then in lieu of the $10,000 maximum fine, he or she may be fined not more than two times the gross value gained or two times the gross loss caused. The convicted person may also be assessed court costs plus the reasonable costs of investigation and prosecution.

The WOCCA also provides civil remedies for WOCCA violations and increased criminal penalties for a continuing criminal enterprise. The civil remedies include: (a) forfeiture to the state of all property, real or personal, including money, used or intended for use in the course of, or derived from, conduct which has resulted in a conviction under the WOCCA; and (b) payment to any person injured by reason of a WOCCA violation of double the amount of damages suffered by the person, plus punitive damages. The injured person may also recover attorney fees and the reasonable costs of investigation and litigation.

2. Parties to a Crime

Section 939.05, Stats., provides that a person who is "concerned in" the commission of a crime but who did not directly commit it may nevertheless be charged and convicted of the commission of the crime. This is true even if the person who directly committed the crime has not been convicted of the crime.

Under s. 939.05, a person who does not directly commit a crime is "concerned in" the commission of a crime if he or she: (a) intentionally aids and abets the commission of the crime; or (b) is a party to a

conspiracy with another person to commit the crime or advises or hires another person to commit the crime.

3. Increased Penalties for Habitual Criminality, Use of a Dangerous Weapon, Use of Bulletproof Garment and Concealing Identity

The four statutes described below increase penalties for crimes committed by repeat offenders or crimes which involve certain types of conduct. These provisions may come into play in some drug-related crimes.

Section 939.62, Stats., provides that if a person is convicted of a crime and has had a prior felony conviction, the maximum term of imprisonment prescribed for the crime may be increased by up to 10 years, depending on the severity of the present conviction.

Section 939.63, Stats., provides that if a person commits a felony while possessing, using or threatening to use a dangerous weapon, the maximum term of imprisonment prescribed by law for that crime may be increased by up to five years, depending on the severity of the present offense.

Section 939.64, Stats., provides that if a person commits a felony while wearing a bulletproof vest, the maximum term of imprisonment may be increased by five years.

Section 939.641, Stats., provides that if a person commits a felony while his or her usual appearance has been concealed, disguised or altered, with intent to make it less likely that he or she will be identified with the crime, the maximum fine prescribed by law for the crime may be increased by not more than $10,000 and the maximum term of imprisonment may be increased by not more than five years.

C. CONSIDERATION OF AMENDMENTS TO THE UNIFORM CONTROLLED SUBSTANCES ACT

The Drafting Committee on the Uniform Controlled Substances Act of the National Conference of Commissioners on Uniform State Laws has been meeting over the last two years for the purpose of developing amendments to the Uniform Controlled Substances Act. The Committee has revised its draft recommendations several times; the most recent revision is dated February 20, 1989. It is expected that the Committee will submit its final recommendations to the full Conference in August 1989. If the recommendations are approved by the full Conference, a final version of the Act will be printed and distributed to each state. It is expected that the final version, if approved by the Conference, will be distributed to the states sometime in early Autumn 1989.

The Committee's February draft recommends amendments to two portions of the Uniform Controlled Substances Act which are relevant to enforcement of the law. These recommendations are as follows.

1. Emergency Scheduling of Substances

The Committee's February draft would authorize states to undertake emergency scheduling of dangerous substances. This amendment, if adopted by Wisconsin, would allow the Controlled Substances Board to schedule previously unscheduled substances without following the usual rule-making requirements of ch. 227, Stats., thereby bringing those substances quickly under the prohibitions of the Act. The purpose of this procedure would be to enable law enforcement personnel to take prompt action against the manufacturers and distributors of so-called "designer drugs." These are substances which have properties very similar to those of certain controlled substances, yet are not precisely identical to those substances in composition and, therefore, do not come under the prohibitions of the Act.

2. Items Subject to Forfeiture

The Committee's February draft expands the list of items which are subject to forfeiture to include, among others, all moneys, negotiable instruments, securities or other things of value which are: (a) furnished or intended to be furnished by any person in exchange for a controlled substance in violation of the Act; or (b) used or intended to be used to facilitate any violation of the Act. Also, the draft expands the list to include all weapons used, or intended for use, to facilitate a violation of the Act.

PART II

STATE ACTIVITIES AND LOCAL ASSISTANCE

Section A of this Part of the Staff Brief describes drug enforcement activities of the DOJ, including investigative assistance provided to local law enforcement agencies and training of local law enforcement officers. Section B describes the activities of the Wisconsin OJA related to drug enforcement, including the administration of federal grants to state and local agencies.

A. DEPARTMENT OF JUSTICE

1. State-Level Enforcement

The major drug investigation unit in state government is the Bureau of Narcotics and Dangerous Drugs, in the DOJ's Division of Criminal Investigation (DCI). The Bureau currently has assigned to the enforcement of narcotics and dangerous drugs 45 full-time employes, including one Bureau Director, 32 regular agents and 12 special agents assigned to "conspiracy teams." The conspiracy teams target major drug and conspiracy cases as priorities.

There are four DCI regions in the state, headquartered in Milwaukee, Madison, Eau Claire and Appleton. The staff from the Bureau of Narcotics and Dangerous Drugs assigned to the DCI Central Office and each DCI region are as follows:

--Central Office (Madison): Director of Bureau of Narcotics and Dangerous Drugs

--Milwaukee Region: 1 supervisor, 8 regular agents, 3 conspiracy team agents

--Madison Region: 1 supervisor, 8 regular agents, 3 conspiracy team agents

--Eau Claire Region: 1 supervisor, 6 regular agents, 3 conspiracy team agents

--Appleton Region: 1 supervisor, 6 regular agents, 3 conspiracy team agents

Thirty-three of these positions are funded by general purpose revenue (GPR); the 12 conspiracy team agent positions are funded by federal

revenues (FED) provided under the Federal Anti-Drug Abuse Acts described under Section B, below.

The Bureau of Narcotics and Dangerous Drugs assists local law enforcement agencies in the investigation of controlled substances violations and organized commercial vice and also initiates investigations on its own when local law enforcement agencies are unable to do so. In cases where the Bureau initiates an investigation on its own, it follows a policy of attempting to work closely with local law enforcement agencies to the extent possible.

The Bureau gives priority to investigating violations involving narcotics, cocaine, amphetamines, barbituates and lysergic acid diethylamide (LSD), marijuana cultivation and clandestine labs. It also emphasizes investigations of persons who are responsible for organized vice activities.

2. Investigative Assistance to Local Law Enforcement Agencies

The Bureau of Narcotics and Dangerous Drugs provides assistance to local law enforcement agencies in the investigation of controlled substances violations, in response to requests from the local agencies; the DCI has the discretion to refuse to provide such assistance.

According to Gary Hamblin, Director, Bureau of Narcotics and Dangerous Drugs, the Bureau's assistance is helpful to local agencies for four reasons. First, the Bureau has statewide law enforcement authority, whereas local units of government have jurisdiction only in their area. Second, the Bureau can provide local authorities with trained undercover personnel. This is particularly useful in small communities where law enforcement personnel are widely known and recognized by the residents. Third, the Bureau has greater access to "buy money" than do local units of government. Finally, the Bureau has the equipment and expertise to carry out court-authorized wiretaps. Although local law enforcement agencies have the authority to carry out wiretaps, as a practical matter, they do not do so without the assistance of the Bureau.

According to Mr. Hamblin, because of a shortage of manpower, the Bureau may occasionally refuse to provide undercover agents to assist a local investigation if the local agency does not have an informant on the case. The DCI prefers to use its undercover agents to assist local investigations in which an informant is involved because such investigations generally move along more quickly than where there is no informant. When the Bureau does not provide a requested undercover agent, a local law enforcement agency will often be assisted by other law enforcement agencies within the local multi-agency drug enforcement unit.

Under this arrangement, local law enforcement agencies "loan" officers back and forth. [See Section B of this Part of the Staff Brief for further information on multi-agency drug enforcement units.]

The Bureau of Narcotics and Dangerous Drugs also assists local law enforcement agencies by acting as a clearinghouse for information received on a statewide basis, disseminating information to local law enforcement agencies and acting as liaison between local law enforcement agencies to coordinate investigations of mutual interest.

3. Training of Local Law Enforcement Agency Officers

All law enforcement officers in the state receive training provided by the Bureau of Training and Standards in the DOJ's Division of Law Enforcement Services. This training is funded through a penalty assessment made whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance, except for state laws or municipal or county ordinances involving nonmoving traffic violations. The total penalty assessment is 20% of the fine or forfeiture imposed. Eleven-twentieths of the penalty assessment (which equals 11% of the fine or forfeiture) goes to the DOJ for law enforcement training programs, reimbursement of local training costs, crime laboratory equipment and state administrative costs [s. 165.87 (2), Stats.].

Every full-time law enforcement officer in the state must receive at least 320 hours of training within the first year after his or her appointment. This training is conducted at police recruitment schools located at vocational, technical and adult education (VTAE) schools throughout the state. In addition, the Bureau of Training and Standards offers a Basic Drug School, a Basic Undercover School and an Advanced Drug School. These Schools are conducted once a year at various locations throughout the state. Approximately 30 law enforcement officers per year are trained at each of the three types of specialized training schools. Any law enforcement officer in the state may apply to attend the schools. The DOJ has the discretion to choose from among the applicants. According to Mr. Hamblin, each year the demand for this specialized training exceeds the number of training slots available.

4. Marijuana Eradication

The Bureau of Narcotics and Dangerous Drugs conducts a federally-funded marijuana eradication program established under 21 U.S.C. s. 873 (a) (5). The goal of this program is to locate and eradicate illegal cultivation of marijuana. The program is funded by the Federal

Drug Enforcement Administration (DEA). The Bureau received $16,000 for this program in calendar year 1988 and expects to receive the same amount for calendar year 1989.

When a local law enforcement agency notifies the DCI that it has received a tip regarding illegal cultivation of marijuana, the Bureau conducts an aerial surveillance of the area. The Bureau uses Department of Natural Resources (DNR) aircraft or, if a DNR plane is unavailable, a rented plane. After verifying the existence of illegal cultivation through the aerial surveillance, the agents proceed with a ground search and further investigation as appropriate. Throughout the entire process, the Bureau works closely with local law enforcement agencies.

In some instances, large amounts of marijuana and cultivation equipment are seized which must be preserved as evidence if a prosecution results from the investigation. The federal funds may be used to pay the costs of transporting and storing such evidence.

B. OFFICE OF JUSTICE ASSISTANCE

The OJA, which is attached to the Department of Administration, under s. 15.03, Stats., for administrative purposes only, was created by 1987 Wisconsin Act 27 (the 1987 Budget Act). The Office is required, among other things, to recommend appropriate legislation in the criminal and juvenile justice fields to the Governor and the Legislature and to cooperate with and render technical assistance to state agencies and local units of government.

The primary function of the OJA related to drug law enforcement is the administration of grants received by the state under the Federal Anti-Drug Abuse Act of 1986 [P.L. 99-57] and the Federal Anti-Drug Abuse Amendments Act of 1988 [P.L. 100-690]. Under these Acts, states receive grants for drug abuse prevention and education, treatment and rehabilitation and drug law enforcement.

For law enforcement purposes, Wisconsin was granted $3,464,000 million for federal fiscal year (FFY) 1987 under the Federal Anti-Drug Abuse Act of 1986 but did not actually receive this money until January 1988. For FFY 1988, Wisconsin was granted $1,040,000 for law enforcement purposes under the 1986 Act and received the money in September 1988. According to the OJA, Wisconsin has been granted $2.8 million for law enforcement purposes for FFY 1989 under the Anti-Drug Abuse Amendments Act of 1988 and will receive that money in the Spring of 1989.

Both of the Federal Anti-Drug Abuse Acts allow the administering agency to retain up to a certain portion of the state's grant amount for

administration. The OJA retained 4.5% ($154,600) of the amount granted to the state for FFY 1987 and 20% ($208,000) of the amount granted to the state for FFY 1988 for administrative purposes. The Acts require that at least 65% of the total grant amount be passed through as grants to local units of government; the amounts remaining after deduction of local grants and administrative expenses may be provided as grants to state agencies.

Of the $3,464,000 million which Wisconsin received in January 1988 under the 1986 Act, $2,248,000 (65%) was granted to local units of government and $1,061,369 was granted to state agencies. Of the amount granted to state agencies, the DHSS received 45% ($477,616) and the DOJ received 55% ($583,752).

The DOJ uses the grant money it receives primarily for the salaries of criminal investigators, upgrading state crime laboratories and purchasing equipment. The DHSS uses the grant money it receives for drug abuse day treatment programs provided to drug offenders who are on probation or parole, and for salaries of "Intensive Supervision Agents" assigned to drug offenders on probation or parole.

Of the $1,040,000 which Wisconsin received in September of 1988 under the 1986 Act, 65% of the amount remaining after administrative costs ($540,000) was reserved for local units of government. According to Nathaniel Robinson, OJA, the OJA has not yet distributed that money to local units of government because the amount is so small. The OJA has distributed a portion of the $292,000 remaining after administrative costs which is reserved for state agencies. The DHSS has received 17% of the $292,000 ($49,600), while DOJ has received 68% ($198,500). Approximately, 15% ($40,000) of the $292,000 reserved for state agencies has not been allocated. According to Mr. Robinson, the amounts which have not yet been distributed to the state and local agencies will be distributed along with the amounts which will be received in 1989 under the 1988 Act.

The Anti-Drug Abuse Acts require that each state agency and local unit of government receiving money under the Act provide a 25% match. Three percent of the money from the Wisconsin penalty assessment fund is used to provide 3/5ths of the required local match. [See Section A, of this Part, of the Staff Brief for a description of the penalty assessment fund.]

In Wisconsin, the grant allocation for local law enforcement agencies is administered through the lead agencies of multi-agency drug enforcement units, rather than being provided directly to individual law enforcement agencies. [There is one exception to this procedure. The Menominee Tribal Police Department, which is not a member of any multi-agency drug enforcement unit, receives direct grants.] Multi-agency drug enforcement units are formed on the basis of a cooperative agreement between the

enforcement agencies involved. All of these units are either: (1) Metropolitan Enforcement Groups (MEG's), defined as two or more counties' law enforcement and related agencies combined for the purpose of achieving maximum impact on anti-drug abuse activities; or (2) multi-jurisdictional groups (MJG's), defined as several law enforcement and related agencies within a single county combined for the purpose of achieving maximum impact on anti-drug abuse activities. There are currently 11 MEG's and 13 MJG's which include 186 law enforcement agencies (police and sheriff's departments) in 57 of Wisconsin's 72 counties. These units currently serve 87% of the state's population. One member of each multi-agency drug enforcement unit is designated the "lead agency" which is responsible for administration of grants to the unit.

In order for a MEG or MJG to receive a grant under the Anti-Drug Abuse Acts, the lead agency must submit an application to the OJA. The application must specify how the money will be distributed to the other members of the MEG or MJG or otherwise expended to assist those units. The lead agencies are responsible for administering or utilizing the grant in the manner specified in its application. The applications are reviewed by the Governor's Council on Law Enforcement and Crime. Based upon recommendations of the Council, the Governor decides which MEG's or MJG's will receive money.

The following table lists the lead agency of each MEG or MJG which received a grant for FFY 1987 under the 1986 Federal Anti-Drug Abuse Act and the amount received by that unit.

GRANTS TO MULTI-AGENCY DRUG ENFORCEMENT UNITS
UNDER THE 1986 ANTI-DRUG ABUSE ACT
FEDERAL FISCAL YEAR 1987

Lead Agency	Grant Amount Plus Required 25% Match
Beaver Dam, City of	$76,493
Brown County	$118,505
Columbia County	$100,857
Douglas County	$174,085
Eau Claire County	$109,573
Iron County	$27,971
Jefferson County	$95,133
Kenosha County	$134,719
La Crosse County	$92,667
Marathon County	$219,591
Marinette, City of	$106,968
Menominee Indian Tribe	$21,382
Middleton, City of	$160,192
Milwaukee County	$523,919
Ozaukee County	$86,708
Polk County	$29,544
Racine, City of	$193,867
Richland County	$134,287
Rock County	$79,465
Sauk County	$72,304
Shawano County	$60,888
Washington County	$82,760
Waukesha County	$123,249
Winnebago County	$107,380
Wood County	$37,403
TOTAL	$2,969,910

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PENALTIES FOR CONTROLLED SUBSTANCES VIOLATIONS

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE	
1. Heroin: 3 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to 15 years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 30 years.
2. Heroin: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned six months to 15 years. Second or subsequent offenses: shall be fined $2,000 to $500,000 and shall be imprisoned one to 30 years.
3. Heroin: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.
4. Other Schedule I or II Narcotics	Same as penalty under A, 1, above.
5. PCP, Amphetamine or Methamphetamine: 3 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 10 years.
6. PCP, Amphetamine or Methamphetamine: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned 6 months to five years. Second or subsequent offenses: shall be fined $2,000 to $500,000 and shall be imprisoned one to 10 years.
7. PCP, Amphetamine or Methamphetamine: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE (continued)	
8. LSD: one gram or less	Same as penalty under A, 5, above.
9. LSD: over one gram and up to five grams	Same as penalty under A, 6, above.
10. LSD: over five grams	Same as penalty under A, 7, above.
11. Psilocin or Psilocybin: 100 grams or less	Same as penalty under A, 5, above.
12. Psilocin or Psilocybin: over 100 grams and up to 500 grams	Same as penalty under A, 6, above.
13. Psilocin or Psilocybin: over 500 grams	Same as penalty under A, 7, above.
14. Cocaine: 10 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 10 years.
15. Cocaine: over 10 grams and up to 30 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years.
16. Cocaine: over 30 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE (continued)	
17. THC (chemical in marijuana): 500 grams or less	First offense: shall be fined $500 to $25,000 and may be imprisoned up to three years. Second or subsequent offenses: shall be fined $1,000 to $50,000 and may be imprisoned up to six years.
18. THC: over 500 grams and up to 2,500 grams	First offense: shall be fined $1,000 to $50,000 and shall be imprisoned three months to three years. Second or subsequent offenses: shall be fined $2,000 to $100,000 and shall be imprisoned six months to six years.
19. THC: over 2,500 grams	First offense: shall be fined $1,000 to $100,000 and shall be imprisoned one to 10 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and shall be imprisoned two to 20 years.
20. Other Schedule I or II Non-Narcotics	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
21. Schedule III	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
22. Schedule IV	First offense: may be fined up to $10,000 and may be imprisoned up to three years. Second or subsequent offenses: may be fined up to $20,000 and may be imprisoned up to six years.
23. Schedule V	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER	
1. Heroin: 3 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to 15 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and may be imprisoned up to 30 years.
2. Heroin: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to 15 years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 30 years.
3. Heroin: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.
4. Other Schedule I or II Narcotics	Same as penalty under B, 1, above.
5. PCP, Amphetamine or Methamphetamine: 3 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and may be imprisoned up to 10 years.
6. PCP, Amphetamine or Methamphetamine: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 10 years.
7. PCP, Amphetamine or Methamphetamine: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER (continued)	
8. LSD: one gram or less	Same as penalty under B, 5, above.
9. LSD: over one gram and up to five grams	Same as penalty under B, 6, above.
10. LSD: over five grams	Same as penalty under B, 7, above.
11. Psilocin or Psilocybin: 100 grams or less	Same as penalty under B, 5, above.
12. Psilocin or Psilocybin: over 100 grams and up to 500 grams	Same as penalty under B, 6, above.
13. Psilocin or Psilocybin: over 500 grams	Same as penalty under B, 7, above.
14. Cocaine: 10 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to five years. Second or subsequent offense: shall be fined $2,000 to $200,000 and may be imprisoned up to 10 years.
15. Cocaine: over 10 grams and up to 30 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 10 years.
16. Cocaine: over 30 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned up to two to 30 years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER (continued)	
17. THC (chemical in marijuana): 500 grams or less	First offense: shall be fined $500 to $25,000 and may be imprisoned up to three years. Second or subsequent offenses: shall be fined $1,000 to $50,000 and may be imprisoned up to six years.
18. THC: over 500 grams and up to 2,500 grams	First offense: shall be fined $1,000 to $50,000 and shall be imprisoned three months to five years. Second or subsequent offenses: shall be fined $2,000 to $100,000 and shall be imprisoned six months to 10 years.
19. THC: over 2,500 grams	First offense: shall be fined $1,000 to $100,000 and shall be imprisoned one to 10 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and shall be imprisoned two to 20 years.
20. Other Schedule I or II Non-Narcotics	Same as penalty under B, 17, above.
21. Schedule III	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
22. Schedule IV	First offense: may be fined up to $10,000 and may be imprisoned up to three years. Second or subsequent offenses: may be fined up to $20,000 and may be imprisoned up to six years.
23. Schedule V	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.

OFFENSE	PENALTY
C. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO MANUFACTURE OR DELIVER CONTROLLED SUBSTANCES	
1. Cocaine	Same as penalties applicable to manufacturing, delivering or possessing with intent to manufacture or deliver cocaine, by weight.
2. Substances Other Than Cocaine	Same as penalties applicable to manufacturing, delivering or possessing with intent to manufacture or deliver the controlled substance.
D. POSSESSION OF CONTROLLED SUBSTANCES	
1. Heroin	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.
2. Other Schedule I or II Narcotics	Same as penalty under D, 1, above.
3. Cocaine	First offense: may be fined $250 to $5,000 and may be imprisoned up to one year in county jail. Second or subsequent offenses: may be fined $500 to $10,000 and may be imprisoned up to two years in state prison.
4. LSD, PCP, Amphetamine, Methamphetamine, Psilocin or Psilocybin	First offense: may be fined up to $5,000 and may be imprisoned up to one year in county jail. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years in state prison.
5. THC (chemical in marijuana)	First offense: misdemeanor; may be fined up to $1,000 and may be imprisoned up to six months in county jail. Second or subsequent offenses: felony; may be fined up to $2,000 and may be imprisoned up to one year in state prison.
6. Other Schedule I or II Non-Narcotics	Same as penalty under D, 4, above.
7. Schedule III, IV or V	Same as penalty under D, 4, above.

OFFENSE	PENALTY
E. DISTRIBUTION OF CONTROLLED SUBSTANCES TO MINORS THREE OR MORE YEARS YOUNGER	
1. Cocaine	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
2. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine and THC	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
3. All Controlled Substances Other Than Those Under 1 and 2, above	Same fine applicable to manufacture or delivery of substance; up to twice the prison term; or both.
F. DISTRIBUTION OF CONTROLLED SUBSTANCES TO PRISONERS	
1. Cocaine	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
2. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine and THC	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of substance.
3. All Controlled Substances Other Than Those Under 1 and 2, above.	Same fine applicable to manufacture or delivery of substance; up to twice the prison term; or both.
G. DISTRIBUTION OF A CONTROLLED SUBSTANCE ON SCHOOL PREMISES	
1. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine, Any Form of THC.	Maximum term of imprisonment applicable to distribution of particular substance increased by five years.

In addition to the offenses and penalties above, ch. 161 defines the following offenses and penalties for their commission:

161.38 PRESCRIPTIONS. (1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 161.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) No practitioner shall prescribe, orally or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

161.42 PROHIBITED ACTS B--PENALTIES. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section may be fined not more than $25,000 or imprisoned not more than one year or both.

161.43 PROHIBITED ACTS C--PENALTIES. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To counterfeit a drug; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section may be fined not more than $30,000 or imprisoned not more than 4 years or both.

161.435 SPECIFIC PENALTY. Any person who violates s. 161.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

Wisconsin Legislative Council Staff
Mary Matthias, Staff Attorney
September 6, 1988
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